

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

TRANSWEB, LLC,

Plaintiff,

v.

**3M INNOVATIVE PROPERTIES
COMPANY, ET AL.,**

Defendants.

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Civil Action No. 10-4413 (FSH)

**ORDER ON INFORMAL
APPLICATION**

This matter having come before the Court for a telephone status conference on the record on December 9, 2011 to discuss a method for addressing the final privilege disputes;

and the Court having considered the dispute privilege log submitted on December 8, 2011 and the positions of the parties;

and for the reasons discussed on the record on December 9, 2011;

IT IS ON THIS 9th day of December, 2011

ORDERED that, no later than **December 16, 2011**, the defendants shall notify the Court whether or not they will agree to proceed via Fed. R. Evid. 502(d) to resolve the privilege disputes where by production of the documents on the dispute privilege log would not result in a waiver of the attorney-client privilege or work product rule and the documents would be shared for a "quick peek" with a "Rule 502(d) team" from the office of plaintiff's local counsel who would play no further role in this case other than to review the documents and meet with defense counsel who would provide an oral offer of proof that would provide context to the documents in an effort to have plaintiff withdraw its challenge to the privilege/work product assertion over the

documents;

IT IS FURTHER ORDERED that, if the parties do not proceed via Fed. R. Evid. 502(d) or if a privilege/work product challenge will be made to a document despite the Rule 502(d) “quick peek,” then the Court will either appoint a Special Master to resolve the privilege disputes or the Court will hold a hearing on **January 17, 2012 at 9:30 a.m.** The privilege holder will be required to bring two binders that contain copies of the documents identified on the dispute privilege log. The first page of each document should bear that Document No. that has been assigned to it on the dispute privilege log. Counsel for the privilege holder shall be prepared to provide an offer of proof that would satisfy each element of the privilege/rule which is being relied upon to withhold the documents. As to documents that allegedly include a patent analysis, counsel for the privilege holder shall also be prepared to state whether or not the product being analyzed indicated or referred to an understanding of the Transweb technology. If the work product rule is being relied upon as a basis to withhold a document, the privilege holder shall also be prepared to identify with whom litigation was anticipated and provide facts regarding the imminence of the litigation.; and

IT IS FURTHER ORDERED that the timing of the resolution of the privilege disputes shall have no impact on any other deadlines.

s/Patty Shwartz
UNITED STATES MAGISTRATE JUDGE